



July 18, 2001

Ms. Sara A. Hartin  
City Attorney  
City of Copperas Cove  
P.O. Drawer 1449  
Copperas Cove, Texas 76522

OR2001-3122

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149603.

The City of Copperas Cove (the "city") received a request for a specific fire department incident report. You state that most of the responsive information has been released. You claim, however, that the highlighted portions of the report are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the requested report relates to an arson investigation. You also state that the investigation was conducted by the Fire Marshal's Office which is considered a law enforcement unit. *See* Open Records Decision No. 127 (1976) (arson investigation division of fire department is "law enforcement agency" under predecessor to current section 552.108). You state that the Fire Marshal later determined that

the fire was caused not by arson but by young children playing with a lighter. Based on your representations and our review of the documents, we conclude that you may withhold the children's identifying information and the identifying information of the individual who extinguished the fire under section 552.108(a)(2).

We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). You explain that you have withheld the identity of the complainant because you believe that person is an informant. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege does not, however, categorically protect from release the identification and description of a complainant. The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist.

We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); see Open Records Decision No. 333 at 2 (1982); cf. Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976).

We are not persuaded by your argument that individuals will stop reporting fires if they know their identities will be released in response to an open records request. Furthermore, we are not persuaded that the complainant has a privacy interest in withholding his identity from the public. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) (stating that common law privacy protects an individual's private affairs); see generally Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982) (identities of sexual assault victims must be withheld under common law privacy). Thus, we conclude that the complainant's identifying information may not be withheld under section 552.101 or 552.108.

You also contend that the complainant's telephone number and address are protected from disclosure by section 552.101 of the Government Code in conjunction with section 772.318

of the Health and Safety Code. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. To the extent that portions of the information here involve an emergency 911 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts, the information may be confidential under chapter 772. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. See Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. See Health & Safety Code §§ 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the complainant's telephone number and address are protected from public disclosure under section 552.101 as information deemed confidential by statute. If the emergency communication district here is not subject to section 772.118, 772.218 or 772.318, the complainant's telephone number and address must be released to the requestor.

In summary, you may withhold the children's identifying information and the identifying information of the individual who extinguished the fire under section 552.108(a)(2). If the emergency communication district here is subject to section 772.118, 772.218 or 772.318, you must withhold the complainant's telephone number and address under section 552.101. The complainant's name must, however, be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

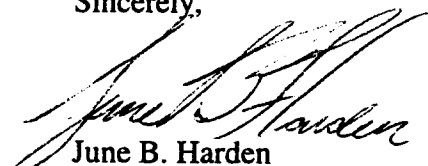
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 149603

Enc. Submitted documents

c: Mr. Glen Svacha  
705 North 2<sup>nd</sup> Street  
Copperas Cove, Texas 76522  
(w/o enclosures)